

Translation

PATENT COOPERATION TREATY

PCT/CH2003/000832



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference IN 005-P/WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/CH2003/000832	International filing date (day/month/year) 19 December 2003 (19.12.2003)	Priority date (day/month/year) 20 December 2002 (20.12.2002)
International Patent Classification (IPC) or national classification and IPC A23G 3/00		
Applicant INNOGEL AG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 5 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 27 April 2004 (27.04.2004)	Date of completion of this report 18 April 2005 (18.04.2005)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

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## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
 pages 1, 3-21, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages 2, 2a, filed with the letter of 12 November 2004 (12.11.2004)
- ☒ the claims:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, as amended (together with any statement under Article 19  
 pages \_\_\_\_\_, filed with the demand  
 pages 1-10, filed with the letter of 12 November 2004 (12.11.2004)
- ☒ the drawings:  
 pages 1/11-11/11, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

- These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

**I. Basis of the report**

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

5...

The amendments submitted with the letter of 12 November 2004 introduce substantive matter which goes beyond the original disclosure in the international application as filed, thereby contravening PCT Article 34(2)(b).

Claim 1: there is no basis in the original application for the passage "the starch matrix comprises a current starch (VS) and optionally? a starch (NS) that can form a network, the current starch (VS) containing less than 20% amylose and/or showing a reduced or vanishing retrogradation tendency; while the network elements of the starch matrix are formed by homocrystallisation of the VS homocrystallites and optionally by heterocrystallisation of the VS with the NS heterocrystallites" (not clear). This amendment filed introduces substantive matter which goes beyond the original disclosure in the application as filed.

The international preliminary examination report is therefore based on the original claims.

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

Novelty (N)	Claims		YES
	Claims	1 - 11	NO
Inventive step (IS)	Claims		YES
	Claims	1 - 11	NO
Industrial applicability (IA)	Claims	1 - 11	YES
	Claims		NO

### 2. Citations and explanations

This report makes reference to the following documents:

D1: WO-A-0044241  
D2: US-A-4726957  
D3: EP-A-0390960  
D4: US-A-5262191  
D5: EP-A-0367064  
D6: EP-A-0360046  
D7: EP-A-0252306  
D8: US-A-3218177  
D9: EP-A-1023841

1(a) It is clear from pages 2-5 of the description that the technical features that characterise the starch matrix are necessary for the definition of the invention.

Since independent claim 1 does not contain these features, it does not meet the requirement of PCT Article 6 in conjunction with PCT Rule 6.3(b), according to which each independent claim must include all the technical features that are necessary for the definition of the invention.

(b) Claims 1-4 and 7 do not meet the requirements of PCT Article 6 because the subject matter for which protection

is sought is not clearly defined (desiderata, parameters). The claims attempt to define the subject matter in terms of the result to be achieved, and in doing so merely state the problem addressed. In order to eliminate this defect, the technical features necessary to achieve this result should be included in the claims.

(c) The expressions "homocrystallisation", "heterocrystallisation", "current starch", "starch that can be networked", "VS", "NS", "degree of branching Qb" used in claims 5, 6, 8 and 9 are vague and unclear and leave the reader uncertain about the meaning of the technical features in question. As a result, the subject matter of these claims is not clearly defined (PCT Article 6).

(d) The relative terms "opaque", "transparent", "sticky", "brittle" used in claim 7 have no generally recognised meaning and leave the reader uncertain about the meaning of the technical features in question. As a result, the subject matter of these claims is not clearly defined (PCT Article 6).

Observation: Owing to said lack of clarity, and because it was impossible to compare the parameters selected by the applicant with those disclosed in the prior art, these technical features of these claims were not taken into account when assessing novelty.

2. The present application does not meet the requirements of PCT Article 33(2) because the subject matter of claims 1-11 is not novel.

(a) Document D1 discloses (pages 1-13, the claims and the examples) a method for producing confectionery based on a starch matrix (network). Document D1 also discloses a use

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as a substitute for gelatine-based confectionery.

The subject matter of claims 1-11 is therefore not novel  
(PCT Article 33(2)).

(b) Also in view of documents D2-D4 (the claims and the  
examples), claims 1-11 do not appear to be novel.